

***527 R. v Brandon Jolie**

Court of Appeal (Criminal Division)

13 July 2010

[2010] EWCA Crim 1816

[2011] 1 Cr. App. R. (S.) 87

Lord Justice Leveson , Mr Justice Roderick Evans and Judge Stokes QC , Recorder of Nottingham:

July 13, 2010

Conspiracy; Murder; Sentence length; Sentencing guidelines; Young offenders

H1 *Conspiracy to murder—conspiracy to murder pregnant girlfriend by drowning—length of sentence*

H2 Fourteen years' detention in a young offender institution upheld for conspiracy to murder, where the applicant conspired with an accomplice to murder the applicant's 15-year-old pregnant former girlfriend.

H3 The applicant pleaded guilty to conspiracy to murder. The applicant and an accomplice planned to murder the applicant's 15-year-old pregnant former girlfriend. The applicant and his accomplice had planned the murder over a period of weeks. The applicant had discovered that his girlfriend, aged 15, was pregnant and did not consider that he could cope with the prospect of becoming a father. He disassociated himself from the girlfriend, but then arranged to meet her. The applicant spoke to the girl by a mobile telephone and directed her to a secluded spot near a canal. The applicant arrived at a hall of residence where he was studying at the time. The applicant's accomplice saw the girl, struck her a number of times to the back of the head with a metal pole, punched and kicked her as she was on the ground, pushed her into the canal and held her head under water. A passer-by confronted the accomplice who ran away. The passer-by rescued the girl. Sentenced to 14 years' detention in a young offender institution.

H4 **Held:** the sentencing judge correctly considered the Sentencing Guidelines Council guidelines for offences of attempted murder. This was a conspiracy to murder that was actually put into effect. The sentencing judge placed the offence at Level 2 within the guidelines as a case involving long-term psychological harm and some physical harm to the complainant. He took a starting-point between 15 and 20 years and gave the applicant credit for his plea, which was entered at an adjourned plea and case management hearing after overwhelming evidence had been disclosed. Some members of the applicant's family had given evidence against the accomplice. The Court was referred to *Ferret [1998] 2 Cr. App. R. (S.) 384*. That case was wholly different. In the Court's view, this was a truly appalling crime and the sentence was not manifestly excessive. The application would be refused.

H5 Case cited:

Ferret [1998] 2 Cr. App. R. (S.) 384

H6 **References:** attempted murder, Current Sentencing Practice B2-1.3C ***528**

H7 Representation

G. Green for the applicant.

JUDGMENT

Judge Stokes QC:

1 On February 12, 2009, at the Central Criminal Court, this applicant pleaded guilty to a single count of conspiracy to murder. That was his fourth appearance before the court. He first appeared before the court on a preliminary hearing on November 27, 2008. He was not sentenced until December 4 of last year as his co-accused, Ogundele, fought the matter and the trial did not conclude until that time. This applicant was then sentenced by the trial judge, H.H. Judge Worsley QC, to a term of 14 years' detention in a young offender institution with a direction under s.240 of the Act of 2003 that the 282 days he spent on remand should count towards sentence. He now renews his application for leave to appeal against sentence following refusal by the single judge.

2 This applicant, together with Kingsley Ogundele, carefully planned and sought to execute a cold and callous scheme to murder the applicant's 15-year-old pregnant former girlfriend. The fact that she did not in the event die was because of the courageous and timely intervention by a member of the public, Mr Andrew Hall, who bravely prevented Ogundele from drowning the complainant after he had attacked her with a metal pole, knocked her to the ground and tipped her into the Regent's Canal in Islington. Ogundele was actually trying to hold her head under the water when Mr Hall intervened.

3 This was, in the words of prosecuting counsel, a cold and calculated offence motivated solely by selfish reasons. Further, this was not a conspiracy hatched in a moment or two of high emotion, put into effect quickly before wiser counsel prevailed. It was carefully thought through over a period of weeks. The conspirators considered every angle, including the steps that they should take in order to cover their tracks and escape responsibility for their actions.

4 What is all the more surprising about this case is that this applicant was plainly a highly intelligent and talented young man. He has no previous convictions. Although his father died when he was very young, his mother and his stepfather, over the whole of his upbringing, ensured he had every possible advantage they in their particular circumstances could provide. It was also clear that the applicant took full advantage of their generosity and assistance. He did very well at school. He obtained three A-levels, as well as achieving great success on the sports field. At the time of these events, he had started a degree course at Luton University and plainly had an exciting and successful future before him.

5 His particular talent lay in the field of what is known as "grime" music. He had shown great potential in this area from a young age. He and Ogundele were heavily involved in this scene, both as MCs and producers. If their Myspace website is to be believed, the applicant had already enjoyed considerable success. Some of his music had been used in a film and on television, including apparently in Eastenders. The applicant and Ogundele were known by tags or pseudonyms. Ogundele was known as Snoopy Montana and the applicant as Maniac. They would be in regular communication with each other, frequently through the MSM messaging system. It was the fact that Ogundele's computer system retained the relevant messages that enabled this conspiracy against him to be proved and may well have played a *529 part in this applicant's decision to plead guilty because the evidence that was obtained from that computer is simply overwhelming in relation to the steps these men were taking, leading up to the events when Ogundele actually tried to kill the complainant.

6 The complainant, as we have indicated, was a 15-year-old girl. She was six months' pregnant at the time of these events. The applicant had discovered her pregnancy. He regarded his becoming a father at that point in his life as something with which he could not cope. He was anxious that his mother should not discover the position and he effectively disassociated himself from this young woman for a period of time. He plainly regarded this relationship much more casually than did she. It may well have been that early on she was minded to terminate the pregnancy, which is what he wanted her to do, but in the event she decided to keep the baby and it is that fact which appears to have prompted this conspiracy.

7 In the weeks leading up to November 12, 2008, contact was made again between the applicant and his former girlfriend. It would appear on the evidence that she was very excited that he had apparently changed his view. She was then 24 weeks pregnant. She had had a scan. She knew that she was expecting a little boy.

8 The applicant arranged to meet the complainant and the meeting was arranged for 5.00pm on

the afternoon of Wednesday November 12, 2008, outside Angel tube station. Ogundele had long term connections with that area of Islington. He had the requisite local knowledge and knew how the girl could be lured to the canal bank.

9 She arrived at the tube station as arranged and called the applicant. He unusually asked her if she was alone. In a series of calls and texts that then took place between the applicant and Ogundele and between the applicant and the complainant over a period of just under two hours, he took directions from Ogundele and relayed the information to the complainant so that she ended up in a secluded spot at the site of Regent's Canal to the south of Packington Bridge. She, of course, had no idea there was any third party involved.

10 No doubt in order to establish that he had no connection with the events that were due to take place, this applicant was on his way and arrived in his hall of residence where he was studying. Ogundele, meanwhile, saw the girl. He walked past her. She approached the bridge. He glared at her. She walked down the pathway and left the bridge. She passed a member of the public. Ogundele then ran up behind her. He was holding a metal pole. She noticed him and said "Please don't, I'm pregnant". He struck her a number of times to the back of the head with the pole. She fell to the ground.

11 The person who passed her earlier, Mr Hall, heard her scream. He saw Ogundele kick her and punch her while she was on the ground. He ran over and screamed at Ogundele to leave her alone. As he was approaching Ogundele, Ogundele pushed or tipped her into the canal and held her head under the water. She was struggling when Mr Hall then confronted Ogundele, who panicked and ran away. Mr Hall then pulled the complainant from the canal. As one can easily imagine, she was in a very distressed condition.

12 Mr Hall called the police and an investigation began. The trail led back to this applicant. He was arrested at his hall of residence in Luton in the early hours of the following morning. He made certain admissions in interview about his relationship with the complainant and his desire that she should have an abortion. He agreed he had arranged to meet her and directed her to the area where the attack ***530** took place. He conceded that there was an associate who would meet her there but he claimed and asserted that it was only to talk to her and persuade her to leave the applicant alone. He made no admissions that amounted to the offence with which he was to be charged.

13 As we have indicated, he was sentenced by the learned trial judge to 14 years' detention in a young offender institution.

14 The trial judge had the great advantage of presiding over the trial of Ogundele. He heard all the evidence. He considered the Sentencing Guidelines Council guidelines published on July 16 last year in relation to offences of attempted murder. In our judgment, he was right to do so. As we have indicated, this was a conspiracy to murder that was actually put into effect. This applicant's role in luring the complainant to the place where it was intended she should die had been completed. As Ogundele went about the final actions that were intended to bring about this young woman's death and the death of her unborn child, this applicant, as we have indicated, was well away from the scene. He had entirely completed his role in the conspiracy.

15 The judge placed this offence at level 2, involving, as he decided it did, long term psychological harm and some physical harm to the complainant. He took a starting point between 15 and 20 years, as he plainly considered that the case straddled the two upper brackets of a level 2 offence. Again, in our judgment he was right to do so. He gave this applicant credit for his plea which, despite what Mr Green has submitted to us this morning, was plainly not entered at the first available opportunity, but, as we have said, at an adjourned plea and case management hearing, after the overwhelming evidence provided by the computer had been disclosed. Appropriate credit was given as is evidenced by the fact that this applicant's sentence was four years shorter than Ogundele's but full credit cannot be expected where a plea is entered only after cogent evidence is disclosed that would inevitably have led to a conviction after a trial.

16 Mr Green has also drawn our attention to the fact that not only has the impact on the applicant's family been understandably devastating but that they played a role in giving evidence, or some of them did, at the trial of Ogundele. He has referred us to the case of *Ferret [1998] 2 Cr. App. R. (S.) 384* at 384. That, with respect to Mr Green, is a wholly different situation. In the case of *Ferret*, the defendant, who was someone addicted to drugs, had confessed to his own

mother what he had done and his own mother informed the police, given the circumstances, that we need not go into, that arose in that particular case. This applicant never said anything to his mother. Neither did he admit the matter as soon as he could have done and volunteer to give evidence against his co-accused.

17 In refusing leave to appeal in this case, the single judge said this:

“You planned to lure your young victim to her death. It was your intention to kill her, and her unborn child, in order to avoid the responsibilities of fatherhood which would interfere with your plans and ambitions ... Nor do I accept the submission that you required some persuasion by your co-accused: you were very willing to plan the murder, your only concern being as to the risks of being caught. It was an extraordinarily callous and selfish plan, developed in detail over a period of weeks, and it very nearly succeeded.”

18 We take the view that this was a truly appalling crime. We recognise that the impact on the applicant and his wholly decent family would be considerable but ***531** we have to stand back and ask ourselves whether the sentence in this case in all the circumstances is manifestly excessive. We are firmly of the view that it is not. This application must be refused. ***532**

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